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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 1999/3

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Executive summary

The report of the Special Rapporteur to the Commission on Human Rights refers to information received from various States on mercenary activities and on their position with regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989. It also mentions the Special Rapporteur's visit to the United Kingdom of Great Britain and Northern Ireland between 25 and 30 January 1999 and gives a detailed account of the Special Rapporteur's visit to the Republic of Cuba between 12 and 17 September 1999.

The Special Rapporteur sets forth how his visit to Cuba at the invitation of the Government of that country enabled him to confirm in situ that various attacks had been carried out on hotels and tourist facilities in Havana in 1997, that the attacks had been carried out by foreigners for financial gain and that the persons concerned had been recruited, trained, hired and funded by third parties of Cuban origin acting outside the territory of the Republic of Cuba. The Special Rapporteur describes in his report his interviews with the persons detained for carrying out the attacks, of eyewitnesses and victims, as well as meetings with the Cuban authorities. The Special Rapporteur concludes that the attacks in question were designed to inflict high-profile damage on tourist flows to Cuba, thereby flouting fundamental rights of the Cuban people and basic principles of international law.

The report also looks at private firms providing security services and military assistance and concludes that the intervention by these firms in armed conflicts and the recruitment and hiring of mercenaries by these firms are harmful to the international order and should not be tolerated. The Special Rapporteur recommends that agreements should be reached to regulate military security at the international and national levels and to regulate these firms.

Lastly, the report points out that, 10 years after the International Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted by the General Assembly, only 19 States have ratified or acceded to it, whereas 22 are needed for it to enter into force. The Special Rapporteur requests the Commission on Human Rights to appeal once more to all States to become parties to the Convention, so as to help close the legal loopholes that currently facilitate the use and proliferation of mercenaries.

Introduction

1 At its fifty-fifth session, the Commission on Human Rights adopted resolution 1999/3 of 23 April 1999 in which it recognized that armed conflicts, terrorism, arms trafficking and covert operations by third Powers, inter alia, encouraged the demand for mercenaries on the global market. The Commission reaffirmed that the use of mercenaries and their recruitment, financing and training were causes for grave concern to all States and violated the purposes and principles enshrined in the Charter of the United Nations. The Commission welcomed the adoption by some States of national legislation that restricted the recruitment, assembly, financing, training and transit of mercenaries and also welcomed the cooperation of those countries that had extended an invitation to the Special Rapporteur.

2 The Commission called upon all States that had not yet done so to consider taking the necessary action to ratify or accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and urged them to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries. In particular, it urged all States to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State, or dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right to self-determination of peoples.

3 The Commission requested the Special Rapporteur to report, with specific recommendations, his findings on the use of mercenaries to undermine the right to self-determination to the Commission at its fifty-sixth session. It urged all States to cooperate fully with the Special Rapporteur in the fulfilment of his mandate and requested the Secretary-General to provide him with all the necessary assistance. The Commission also requested the Office of the United Nations High Commissioner for Human Rights, as a matter of priority, to publicize the adverse effects of mercenary activities on the right of peoples to self-determination and, when requested and where necessary, to render advisory services to States that were affected by the activities of mercenaries.

4 The Commission also requested the Secretary-General to invite Governments to make proposals towards a clearer legal definition of mercenaries. The Secretary-General had complied with this request by sending a note verbale dated 29 October 1999 to all States Members of the United Nations. In this connection, the Commission also requested the United Nations High Commissioner for Human Rights to convene expert meetings to study and update the international legislation in force and to put forward recommendations for a clearer legal definition of mercenaries that would make for more efficient prevention and punishment of mercenary activities. The possibility of convening those meetings in the first six months of 2000 and 2001 is being studied.

5 On 16 November 1999, the Third Committee of the General Assembly also adopted a resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, which has programme budget implications

if the Office of the United Nations High Commissioner for Human Rights is to be able to carry out the activities requested, particularly the convening of expert meetings and the requested publication.

6. Pursuant to the provisions of resolution 1999/3, the Special Rapporteur has the honour to submit this report for the consideration of the Commission on Human Rights.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

7. The Special Rapporteur visited the United Kingdom of Great Britain and Northern Ireland from 25 to 30 January 1999, in response to an official invitation from the Government of that country. During his visit, the Special Rapporteur was able to meet senior officials of the United Kingdom Government, members of Parliament, academics and experts and representatives of non-governmental organizations (NGOs). The Special Rapporteur wishes to express once again his gratitude to the Government for its invitation and its support during the visit, to the United Nations Information Centre in London for its unflagging support, and to the representatives of Amnesty International (United Kingdom Section), International Alert, the Royal Institute of International Affairs at Chatham House, the Centre for Defence Studies of King's College and the Campaign against Arms Trade for their valuable cooperation. An account of the visit can be found in the report submitted by the Special Rapporteur to the General Assembly (A/54/326, paras. 21-37).

8. The Special Rapporteur submitted his report (E/CN.4/1999/11) to the Commission on Human Rights on 23 March 1999 and returned to Geneva on three occasions, from 31 May to 3 June, from 16 to 20 August and from 7 to 10 December 1999, to take part in the sixth annual meeting of special rapporteurs and special representatives, chairpersons of working groups and independent experts of the Commission on Human Rights and to prepare his reports for submission to the General Assembly and the Commission on Human Rights. During his stay in Geneva, the Special Rapporteur held consultations with representatives of various States and meetings with NGOs, as well as coordination meetings with the Thematic Mechanisms Unit of the Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human Rights.

9. The Special Rapporteur had the opportunity to take part in an important academic forum on private security firms and military and security service companies in Africa, held on 12 March 1999 in Washington, DC. The forum was organized by the NGOs International Alert and Global Coalition for Africa and brought together academics and scholars in that field, military experts, lawyers, diplomats, experts on international law, human rights experts and members of NGOs working on the issue. The Special Rapporteur also travelled to New York to submit his report (A/54/326) to the Third Committee of the General Assembly on 21 October 1999.

10. In response to an invitation from the Government of the Republic of Cuba, the Special Rapporteur undertook an official mission to that country from 12 to 17 September 1999. An account of the visit appears in chapter II of this report. The Special Rapporteur would like to

thank the Cuban Government and the various academic, lawyers', tourist and other non-governmental organizations in Cuba for their full cooperation, as well as the local office of the United Nations Development Programme (UNDP) for its assistance.

B Correspondence

11 Pursuant to General Assembly resolution 53/135 of 9 December 1998 and Commission on Human Rights resolution 1999/3 of 23 April 1999, the Special Rapporteur sent a communication on 15 July 1999 to all States Members of the United Nations, requesting the following:

(a) Information on the existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries);

(b) Information available to the Government on participation by nationals of its country as mercenaries in committing acts against the sovereignty of other States, against the exercise of the right of other peoples to self-determination and in human rights violations;

(c) Information on the possible existence of mercenary activities in the territory of another State from which actions are carried out that affect or potentially affect the sovereignty of its own country, the exercise of the right of its people to self-determination and its enjoyment of human rights;

(d) Information on the possible participation of mercenaries in committing internationally wrongful acts such as terrorist attacks, forming and supporting death squads and paramilitary organizations, trafficking in and abduction of persons, drug trafficking, arms trafficking and smuggling;

(e) Information on domestic legislation currently in force and on international treaties to which the country is a party, outlawing mercenary activities and the use of mercenaries, together with observations on the Government's position regarding the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;

(f) Suggestions which, in the Government's view, might be of use in enhancing the international treatment of the topic of prohibiting the use of mercenaries; and

(g) Information and views on international security service and military advice and training companies offering their services to Governments, in order to intervene in internal armed conflicts with the assistance of mercenarized military professionals for the purpose of improving the military effectiveness of government forces, in exchange for cash benefits and shares in the investments and economic ventures of the country in which they operate.

12 The replies of the Governments of Costa Rica and El Salvador to the questionnaire are reproduced in the report of the Special Rapporteur to the General Assembly (A/54/326, paras. 11 and 15).

13. By letter of 30 July 1999, Mr. Petros Kestoras, Deputy Permanent Representative of Cyprus to the United Nations Office at Geneva, sent the Special Rapporteur a copy of Act No. 14 (III)/93 of 21 May 1993 recording the ratification by the Republic of Cyprus of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

14. By note verbale of 31 August 1999, the Permanent Mission of Slovakia to the United Nations Office at Geneva provided the Special Rapporteur with the following information:

> "Valid legal regulation relating to the performance of military service of the citizens of Slovakia in a foreign army results from paragraph 42 of the Act of the National Council of the Slovak Republic No. 351/1997 Coll. on Military Service (hereinafter the 'Act on Military Service').
>
> "In accordance with paragraph 42, section 1, of the above-mentioned Act on Military Service, a citizen can perform military service in a foreign army only with authorization from the President of the Slovak Republic. A citizen granted such authorization is exempt from military service in the armed forces of the Slovak Republic during the performance of military service in the foreign army. After termination of the performance of military service in the foreign army, he is subject to conscription in accordance with the Act on Military Service.
>
> "In accordance with paragraph 42, section 2, of the Act on Military Service, the authorization expires if a State, the army of which a citizen joined, is at war with the Slovak Republic or with a State with which the Slovak Republic has concluded an agreement on common defence against attack.
>
> "In accordance with paragraph 42, section 3, of the Act on Military Service, a citizen addresses an application for the authorization to perform military service in a foreign army to the Ministry of Defence, which shall submit it (together with its views or recommendations) to the President of the Slovak Republic.
>
> "In accordance with paragraph 42, section 4, of the Act on Military Service, there is no possibility of appeal against a decision of the President of the Slovak Republic on authorization to perform military service in a foreign army or on cancellation of the authorization to perform military service in a foreign army.
>
> "In 1999, the Ministry of Defence received three applications for service in the French Foreign Legion and three applications for service in the Yugoslav Army. As to the applications for service in the French Foreign Legion, the Ministry of Defence recommended acceptance of these applications. With regard to the three applications for service in the Yugoslav Army, the Ministry of Defence did not recommend acceptance."

15. By note verbale of 25 October 1999, the Government of Chile transmitted the replies of the Ministry of Defence and the Ministry of the Interior to the questionnaire sent out by the Special Rapporteur, as follows:

"(a) The General Staff of the Ministry of Defence reports that there is no indication whatsoever that any members of the defence institutions have taken part in mercenary activities in matters of the nature concerned;

"(b), (c) and (d) In the area of defence, there is no information on or evidence of any activities of the kind mentioned in these three questions;

"(e) With regard to domestic legislation, attention is drawn to articles 6 and 7 of the 1980 Political Constitution of the Republic of Chile (reproduced below), which regulate what is known in constitutional law as the 'rule of law':

> *'Article 6. The action of the organs of the State must be subject to the Constitution and the norms established in conformity therewith.*
>
> *'The heads and members of these organs, as well as all persons, institutions or groups, are bound by the precepts of this Constitution.*
>
> *'Breach of this principle will generate responsibilities and sanctions to be determined by the law.*
>
> *'Article 7. The organs of the State operate validly within their field of competence, and in the manner described by law, after proper investiture of their members.*
>
> *'No magistracy, person or group of persons may assume, even on the pretext of extraordinary circumstances, any other authority or rights other than those expressly conferred on them by the Constitution or by the law.*
>
> *'Any act contravening this article is null and void and shall give rise to responsibilities and sanctions to be indicated by the law.'*

"Moreover, article 90, in chapter X of the Constitution on the armed forces, forces of order and public security, provides that:

> *'The forces dependent on the ministry responsible for national defence are constituted solely and exclusively by the Armed Forces and the Forces of Order and Public Security. The Armed Forces consist of the army, navy and air force only. They exist to defend the nation, are essential for national security and guarantee the institutional order of the Republic.'*

"Likewise, article 92 of the Political Constitution states the following:

> *'Article 92. No person, group or organization may possess or own arms or other similar elements indicated by a law approved with a qualified quorum, without due authorization granted in conformity with the latter. The ministry responsible for national defence or a body depending thereon shall be entrusted with the supervision and control of arms in the manner determined by the law.'*

"In Chile, therefore, any activity that contravenes domestic legislation, such as the creation or use of a group of mercenaries, is prohibited under the above-cited rules.

"The Ministry of the Interior adds the following: 'This Ministry has no information whatsoever to suggest that any activities of a mercenary nature have been carried out in Chile in the recent past. Nor is there any evidence at all that mercenary activities are being carried out in other countries with the aim of affecting the sovereignty of Chile, the exercise of the Chilean people's right to self-determination and their enjoyment of human rights. Similarly, there is nothing to indicate that Chilean nationals are participating as mercenaries in committing acts against the sovereignty of other States. The Ministry of the Interior is not carrying out any studies and has had no occasion to apply the domestic legislation currently in force with regard to outlawing mercenary activities and the use of mercenaries.'"

16. By letter of 27 October 1999, Mr. Amiran Kavadze, Permanent Representative of Georgia to the United Nations Office at Geneva, transmitted the following reply, prepared by Mr. Rusudan Beridze, Under-Secretary for Human Rights Issues of the National Security Council of Georgia, to the questionnaire sent out by the Special Rapporteur:

"(a) No mercenary activities whatsoever have been conducted by the Government of Georgia, nor exist on the territory of Georgia, except those that may occur on territories that are currently beyond the control of the Government of Georgia (e.g. Abkhazia);

"(b) Certain inhabitants of Abkhazia who conducted terrorist acts and genocide against the ethnic Georgian population allegedly participated in the conflict in Chechnya, Russia;

"(c) Mercenaries from the Northern Caucasian regions of Russia, Russian nationals, participated in the conflicts in Abkhazia, Georgia and South Ossetia, Georgia, and contributed to genocide of the ethnic Georgian population and infringed on the sovereignty of Georgia;

"(d) No information available;

"(e) Georgia is a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989;

"(f) Acknowledging separatism as a plague and the greatest challenge to the country and its denial as a tool for self-determination, robust use of peace enforcement, bringing to international tribunals persons who have committed war crimes against humanity and those who have conducted genocide and separatism;

"(g) No information available."

17. By letter of 6 September 1999, Mr. Canistas Kananura, Chargé d'Affaires a.i. of Rwanda to the United Nations Office at Geneva, sent the following information to the Special Rapporteur:

> "Allow me to inform you that I have sent a copy of your letter to my Government for further information but I can assure you here and now that my country does not recruit mercenaries, finance mercenaries or train mercenaries.
>
> "With regard to the participation of nationals of my country in human rights violations, there are some Rwandans who have committed genocide and who are in the Democratic Republic of the Congo and other countries in the Great Lakes region where they take part in and organize acts that are serious human rights violations and are used as mercenaries in the armies of some countries in the region.
>
> "I cannot give you any more information at the moment but I hope to have more details in the days to come."

18. In 1999, the Special Rapporteur continued to receive the cooperation of various NGOs including Amnesty International, Human Rights Watch and International Alert. He also received communications from, inter alia, the Bahrain Human Rights Organization, the Muttahida Quami Movement (MQM), the Royal Institute of International Affairs at Chatham House and the Organization for Defending Victims of Violence in Tehran. The Special Rapporteur expresses his appreciation for the cooperation of these NGOs in the fulfilment of his mandate.

II. VISIT BY THE SPECIAL RAPPORTEUR TO THE REPUBLIC OF CUBA

A. Activities carried out during the visit

19. The Special Rapporteur undertook an official mission to the Republic of Cuba from 12 to 17 September 1999, in response to an invitation from the Government of that country contained in a letter of 15 October 1998 from Mr. Carlos Amat Fores, Permanent Representative of Cuba to the United Nations Office at Geneva. He was accompanied on his visit by Mr. Miguel de la Lama, a staff member of the Office of the United Nations High Commissioner for Human Rights. The schedule for the visit is contained in the annex to this report. During the mission, the Special Rapporteur was able to meet Mrs. Maria de los Angeles Flórez Prida, Deputy Minister for Foreign Affairs, General Abelardo Colomé Ibarra, Minister of the Interior, Dr. Roberto Díaz Sotolongo, Minister of Justice, Mr. Ibrahim Ferradaz, Minister of Tourism, Dr. Rubén Remigio Ferro, President of the People's Supreme Court, Dr. Juan Escalona Reguera, Attorney-General of the Republic, and General Alvaro López Miera, Deputy Minister and Chief of Staff of the Revolutionary Armed Forces.

20. The Special Rapporteur was also able to meet Mr. Abelardo Moreno and Mr. Juan Antonio Fernández, Director and Deputy Director, respectively, of the Multilateral Issues Department of the Ministry of Foreign Affairs, Mr. Pedro Fanego Sea, an official of that Ministry, Dr. José Peraza Chapeau, Legal Director of the same Ministry, with whom he discussed the possible procedure for accession by Cuba to the 1989 International Convention, Colonel Adalberto Raveiro García, Head of the Judicial Investigation Department of the

Directorate-General of Counter-Intelligence of the Ministry of the Interior, who presented him with a file summarizing terrorist activities against Cuba in the 1990s. A meeting with Dr. Eusebio Leal, Havana City Historian, was particularly instructive.

21. In addition to these meetings, the Special Rapporteur was able to visit the tourist locations where the explosive devices had been planted - the Copacabana, Meliá-Cohiba, Tritón, Nacional de Cuba and Capri hotels, the Ache discotheque in the Meliá-Cohiba hotel and the Bodeguita del Medio restaurant, where he was able to make a visual inspection and observe the power of the explosive devices that had been set off. The Special Rapporteur also talked to several witnesses and some of the victims.

22. The Special Rapporteur was also able to conduct private interviews in the Villa Marista detention centre, without witnesses, of the persons accused of planting the explosive devices. An account of these interviews appears in section B of this chapter.

23. Lastly, the Special Rapporteur wishes to place on record that he was able to speak absolutely freely to various residents of Havana, members of professional, social and cultural organizations, and professionals and others working in the tourist sector. The opportunity to address an academic workshop on the issue of mercenarism and the development of its theoretical definition, organized by the Union of Jurists of Cuba, was particularly welcome. The Special Rapporteur particularly appreciated the valuable papers presented by Dr. Olga Miranda Bravo, Prof. Miguel D'Estéfano Pisani and Dr. René Quirós Pires, to whom he would like to express his gratitude.

24. The Special Rapporteur would like to thank once again the authorities of the Republic of Cuba for their invitation and for their cooperation during his official mission; he wished to thank in particular the officials of the Multilateral Issues Department of the Ministry of Foreign Affairs and the Permanent Mission of Cuba to the United Nations Office at Geneva. He would also like to express his gratitude to the United Nations Resident Coordinator in Cuba and Resident Representative of the United Nations Development Programme (UNDP), Mr. Luis Gomez-Echeverri, the Deputy Resident Representative, Mr. Jorge Chediek, and Mrs. Sara Almer, the staff member who acted as focal point for the mission in UNDP.

25. The Cuban authorities informed the Special Rapporteur that Cuba had been subjected to terrorists attacks and mercenary aggression ever since the Revolutionary Government had come to power. In the 1990s alone, armed men had infiltrated the country by sea on eight occasions with the intention of carrying out terrorist attacks, there had been seven attacks from the sea on tourist facilities and Cuban vessels had been hijacked and attacked by pirates on several occasions. Between 1995 and 1998, 30 explosive devices had been planted, of which 19 had been detected in time and 11 had exploded.

26. The following cases were reported to the Special Rapporteur:

(a) In 1976, mercenaries recruited by Luis Posada Carriles (alias Ignacio Medina) shot down an aeroplane of the Cubana de Aviación company in Barbados, killing 73 people,

(b) Arnaldo Monzón Plasencia, an executive of the Cuban-American National Foundation, together with Gaspar Jiménez Escobedo and Guillermo Novo Sampoll, recruited, hired and financed Santos Armando Martínez Rueda and José Enriquez Ramírez Oro to plant an explosive charge of 1 38 kilograms of C4 plastic explosive in a hotel in Varadero The latter persons entered Cuban territory on forged Costa Rican passports and were paid US$ 8,000 for their services,

(c) Orfiris Perez Cabrera, a Cuban citizen, was paid US$ 20,000 to poison cattle, vandalize foreign cars and carry out attacks on tourist facilities in Havana,

(d) On 12 April 1997, a device made with C4 plastic explosive exploded in the toilet of the Ache discotheque in the Melia-Cohiba hotel in Havana On 30 April, another device containing 401 grams of C4 plastic explosive was discovered on the fifteenth floor of the same hotel,

(e) Four people were injured on 12 July 1997 as a result of almost simultaneous explosions in the reception areas of the Capri and Nacional de Cuba hotels,

(f) Another bomb went off on 4 August 1997 in the reception area of the Melia-Cohiba hotel,

(g) On 22 August 1997, a device exploded in a corridor in the Sol Palmeras hotel in Varadero,

(h) On 4 September 1997, Fabio di Celmo, an Italian citizen, was killed and seven other people injured as a result of explosive devices planted in the Copacabana, Triton and Chateau Miramar hotels and in the Bodeguita del Medio restaurant,

(i) A device containing 178 grams of plastic explosive was found and deactivated on 19 October 1997 inside a minibus intended for the use of tourists, and

(j) Lastly, on 30 October 1997, another bomb, located under a kiosk in José Martí international airport, was detected and deactivated

27 The explosive devices used, and the way in which they were smuggled into Cuba, show many similar characteristics The devices are made with C4 plastic explosive, triggered by electric detonators made of aluminium, with timers connected to batteries of between 3 and 9 volts and with electric interphase circuits The components are cheap and the mechanisms easy to assemble They are also very difficult to discover and detect, even in airport customs areas The plastic explosive was smuggled in the soles of boots or inside hand cream, shampoo or deodorant bottles, the electric circuits inside radios from which the speakers had been removed, and the detonators inside highlighters with no internal liquid

28 The Cuban authorities said there were more than 300 organizations in foreign countries trying to overthrow the Government of Cuba They singled out the following organizations the Former Political Prisoners Club, Comandos L, the National Democratic Unity Party (PUND), the Association of Cuban-American Veterans, and Alpha 66 However, these organizations were

allegedly financed and used as a front by a secret security wing of the Cuban-American National Foundation, referred to as the Cuban National Front, Security Commission or Paramilitary Group. It was stated that the following people allegedly belonged to this secret security group: Luis Zúñiga Rey, Alberto Hernández, Luis Posada Carriles (alias Ignacio Medina), Horacio García, Roberto Martín Pérez, Francisco José Hernández Calvo, Guillermo Novo Sampoll, Ignacio Novo Sampoll, Arnaldo Monzón Plasencia and Afredo Domingo Otero.

29. The Special Rapporteur was told that Luis Zúñiga Rey recruited, on behalf of the secret security group of the Cuban-American National Foundation, Percy Francisco Alvarado Godoy, of Guatemalan origin, to do some research in Cuba to identify vulnerable points that could be targets for possible attacks and to circulate in the country forged banknotes in Cuban convertible currency. He also recruited Orfiris Pérez Cabrera, a Cuban citizen, to carry out a series of sabotage activities in Cuba. Another person with links to the above-mentioned secret organization, Luis Posada Carriles (alias Ignacio Medina), recruited Otto René Rodríguez Llerena, a Salvadoran citizen, to plant explosive devices in tourist facilities in Havana. Rolando Borges Paz allegedly recruited Juan Francisco Fernández Gómez to carry out attacks with explosives in Cuba. The activities were abortive because both Fernández Gómez and Alvarado Godoy were former Cuban agents.

30. The Cuban government officials emphasized in particular that the planning of the attacks pointed to a single mastermind which, they believed, was to be found in the above-mentioned secret security or paramilitary organization of the Cuban-American National Foundation. The tourist sector had been chosen because it was the country's prime source of income, having increased from 340,000 tourists in 1990 to 1,700,000 in 1999. It is also a sector that is highly sensitive to news and publicity, particularly with regard to a country's security. Big-name hotels such as the Meliá-Cohiba hotel and tourist spots of worldwide renown such as the Bodeguita del Medio restaurant had been chosen so that the attacks would make a major impact in the international media. The bombs had been planted not inside bedrooms but in meeting places like reception areas in order to increase the impact of the attacks.

31. Lastly, the representatives of the Cuban Government said that, fortunately, there had been no serious incidents since October 1997. They attributed this to the cooperation and vigilance of the people of Cuba and particularly of the workers in the tourist centres, and to the preventive measures taken by the police. However, such measures cost more than the people should have to pay to maintain security in the country. The aggression came from outside Cuba and the mercenaries had no collaborators inside the country.

B. Interviews of those responsible for the attacks

32. The Special Rapporteur was able to interview in private, without witnesses, Raúl Ernesto Cruz León, aged 28 and of Salvadoran nationality. Cruz León told the Special Rapporteur that, on the morning of 12 July 1997, he left the Ambos Mundos hotel where he was staying and headed with an explosive device for the Hotel Nacional de Cuba intending to set it off there. He changed his mind when he saw the security arrangements inside the hotel and headed then towards the Hotel Capri. He prepared the explosive in a toilet near the hotel

reception and placed it behind an armchair in the reception area, the bomb being programmed to explode in nine minutes. He then went back to the Hotel Nacional de Cuba, where he placed another explosive device in the reception area next to some telephone booths. Both bombs exploded.

33. Cruz Leon went back to San Salvador on 14 July 1997 and returned to Cuba on 31 August 1997, after which he spent his time checking out other hotels as possible targets. On 4 September 1997, he left bombs in a metal ashtray in the bar of the Copacabana hotel, behind an armchair in the reception area of the Chateau Miramar hotel and in the reception area of the Triton hotel, even though he saw that there were some children in the latter place. The three bombs went off. He then planted another explosive device behind a refrigerator in the Bodeguita del Medio restaurant. He was arrested some hours later. Although the bomb planted in the Bodeguita del Medio had not yet gone off, Cruz Leon did not tell the police about it and it exploded. When questioned by the Special Rapporteur, he said he had not told the police about it in the hope that they would think someone else was responsible for the explosions, since he was under arrest.

34. During the interview, the Special Rapporteur was able to observe that Cruz Leon was a man who had been traumatized by violence. Cruz Leon said that from his childhood in El Salvador, he remembered bodies thrown down by the roadside during the years of armed conflict. He had been marked by the last offensive of the Farabundo Marti National Liberation Front in San Salvador which had passed through the neighbourhood in which he lived, and by the subsequent military attack on the Jose Simeon Cañas Central American University, during which Father Ellacuria and other Jesuits belonging to the University were killed. He had developed a strong liking for danger and, in his own words, for the "rush of adrenalin". This had led him to embark on a military career in El Salvador, and he had been a cadet at the General Gerardo Barrios Military Academy in 1991. He had given that up, however, as he did not want to become involved in the political problems of his country and because he could not adapt to military discipline. Subsequently he had taken up high-risk sports and the study and collection of weapons.

35. Cruz Leon told the Special Rapporteur that he had been recruited to plant the explosive devices in Havana by a certain Francisco Antonio Chávez Abarca, with whom he had a friendly relationship based on a shared enthusiasm for firearms and explosives. Chávez Abarca told him that he himself had already planted bombs in hotels in Cuba, that it would not be difficult and that he would be paid US$ 3,700 for the first two bombs he exploded. Chávez Abarca supplied him with all the materials needed to make the bombs, including C4 plastic explosive, took care of all the logistic preparations for his trips, including the relevant visa formalities through the Joanessa travel agency, and gave him US$ 500 for travel expenses. On his return from his first trip to Cuba, he was given US$ 3,000 by Chávez Abarca, so that he was still owed US$ 700. While under arrest, he tried several times to contact Chávez Abarca through his father, Francisco Chávez, his wife, Karla, and his brother, Mario Chávez. Finally, Chávez Abarca telephoned him from Guatemala to tell him he was sending him US$ 100 for his defence. While in prison, Cruz Leon learned that the bomb he had planted in the Copacabana hotel had killed the Italian citizen.

36. Cruz Leon told the Special Rapporteur that he had acted for money and had felt like a hero in a film carrying out a mission. He had tried to put the bombs in places where they would not cause any casualties. His instructions from Chávez Abarca had been simply to make as much noise and create as much confusion as possible. It was only recently in prison that he had understood the implications of his actions and he asked forgiveness of the victims and their families and the people of Cuba. He did not think he deserved to be executed for what he had done as he had cooperated with the police and judicial inquiries and had expressed remorse during the trial.

37. The Special Rapporteur also interviewed Otto René Rodríguez Llerena, a Salvadoran citizen aged 42, a company director and head of security at the Salvadoran vehicle-sales company Didea SA. Rodríguez Llerena told the Special Rapporteur that he had been approached by Ignacio Medina for help in getting a good deal for the purchase of a vehicle from Didea SA. That was the beginning of their friendship, during which Medina offered to pay Rodríguez Llerena US$ 1,000 if he planted a bomb in Havana. Medina took care of all the formalities and preparations for Rodríguez Llerena's trip, provided him with explosives and taught him how to assemble the bomb. On 3 August 1997, Rodríguez Llerena planted an explosive device in the reception area of the Meliá-Cohiba hotel and returned to San Salvador the next day. Medina then gave him the equivalent of US$ 1,000 in Salvadoran colones.

38. Rodríguez Llerena returned to Havana on 10 June 1998 at the request of Medina, who gave him explosives to be delivered to a Cuban citizen called Juan. For transporting the explosives, Rodríguez Llerena was to receive US$ 250 plus his travel expenses. He was arrested on arrival, when the airport customs found the explosives he was carrying. Rodríguez Llerena told the Special Rapporteur that he had acted purely for the money, although the amounts he was offered do not appear very large. At the same time, he gave the impression that he was quite well off in his own country. He also stated that he had followed various military training courses, both in El Salvador and in Fort Benning, United States of America.

39. It is worth mentioning that, during the pre-trial proceedings, Rodríguez Llerena was shown a video recording in which Luis Posada Carriles appeared. Rodríguez Llerena told the Special Rapporteur that he knew the person in question as Ignacio Medina, which seemed to indicate that the person concerned used the two identities.

40. The Special Rapporteur also interviewed the following Guatemalan nationals: Nader Kamal Musallam Baracat, aged 30, unmarried, no known occupation; María Elena González Meza de Fernández, aged 55, married, fortune teller; and Jazid Ivan Fernández Mendoza, aged 30, married to Mrs. González Meza de Fernández. In separate interviews, these individuals made the following basic statement: that the Salvadoran national Francisco Antonio Chávez Abarca, also known as Manuel González, and Mr. Musallam Baracat often made use of Mrs. González Meza de Fernández's fortune-telling services in Guatemala City. In February 1998, Chávez Abarca suggested that the three above-named persons should go to Cuba in order to plant bombs in tourist facilities. Only Fernández Mendoza refused. Chávez Abarca agreed to pay Musallam Baracat US$ 3,000 and Mrs. González Meza de Fernández US$ 2,200 for their services.

41 On 4 March 1998, Musallam Baracat and Mrs. Gonzalez Meza de Fernández arrived in Havana from Cancún, Mexico. Musallam Baracat was arrested in the customs area at José Martí airport when he was found to be carrying explosives. Mrs. Gonzalez Meza de Fernández, who was carrying the detonators, was able to pass through customs but arrested some hours later. Fernandez Mendoza was arrested some days later when he arrived in Havana to look for his wife. Forensic tests later showed traces of explosives on his hands - a result, he said, of having helped his wife to pack. Both Musallam Baracat and Mrs. Gonzalez Meza de Fernández stated that they had acted purely for money. The latter told the Special Rapporteur that she had to pay for medicine for her daughter, who was seriously ill and needed capsules costing US$ 1,000 each.

42 Lastly, the Special Rapporteur interviewed Mr. Percy Francisco Alvarado Godoy, a political science graduate aged 50. Mr. Alvarado Godoy told the Special Rapporteur that he had worked as a secret agent for State security bodies since 1977, under the aliases of Michael and, later, Frayle. He had successfully infiltrated what he described as various counter-revolutionary groups and, in particular, the Cuban-American National Foundation. He said that he had had contacts with, inter alia, Agustin Perez Medina, of the "Comandos L" organization, Luis Zuñiga Rey, of a secret paramilitary group called Frente Nacional Cubano (Cuban National Front), Alfredo Domingo Otero, of the Cuban-American National Foundation, and Luis Posada Carriles. He had agreed with these persons to carry out a series of acts of sabotage and destabilization against Cuba, although he did not in fact do so, pleading various pretexts. The planned actions included placing explosive devices (for each bomb detonated he would receive US$ 5,000), passing counterfeit currency, filming and photographing various economic targets, including the Matanzas industrial area and the Antonio Guiteras power station.

C. Information provided by the Government of Cuba

43 The Government of Cuba gave the following documents to the Special Rapporteur during his visit:

(a) A file containing a report entitled "Summary of the use made of mercenaries against Cuba during the 1990s";

(b) A file containing statements made by persons charged with terrorist acts, and by Cuban agents, to the investigating unit of the State Security Department. They include statements made by Raul Ernesto Cruz Leon, Nader Kamal Musallam Baracat, Maria Elena Gonzalez Meza de Fernandez, Jazid Ivan Fernandez Mendoza, Otto Rene Rodriguez Llerena, Santos Armando Martinez Rueda, Jose Enrique Ramirez Oro, Percy Francisco Alvarado Godoy ("Agent Frayle"), Juan Francisco Fernández Gómez ("Agent Felix") and Olga Alfonso Prada ("Agent Bertha"); and

(c) A file containing forensic reports on the explosions and official statements on the damage caused in tourist resorts, prepared by the Criminal Investigation Department of the Ministry of the Interior.

44 The Government of Cuba also gave the Special Rapporteur four videotapes containing the public statements and reconstructions of the events by Raul Ernesto Cruz León, Otto Rene

Rodriguez Llerena, Nader Kamal Musallam Baracat, Maria Elena Gonzalez Meza de Fernández and Jazid Ivan Fernandez Mendoza. The tapes also contain the public statements by Santos Armando Martinez Rueda and Jose Enrique Ramirez Oro.

45. The Permanent Mission of Cuba to the United Nations Office at Geneva later gave the Special Rapporteur two videotapes of the trials of Raul Ernesto Cruz Leon and Otto Rene Rodriguez Llerena, including the statements by the accused, the indictments by the prosecution and the defence submissions. It also handed over a file containing the Prosecutor's preliminary indictments against Miguel Abraham Herrera Morales, Maria Elena Gonzalez Meza de Fernandez and Jazid Ivan Fernandez Mendoza, as well as the expert forensic reports of the Central Criminal Laboratory of the Ministry of the Interior and a document entitled "History of the Cuban-American National Foundation (FNCA)".

D. Analysis of the attacks and identification of their mercenary nature

46. The main purpose of the visit to Cuba can be gathered from the schedule annexed to this report: to obtain first-hand information about the various attacks on Cuba's tourist facilities, particularly during 1997, and the subsequent investigations, to clarify whether the perpetrators were mercenary agents under the orders of, and financed by, agents and organizations working from outside Cuba to damage its Government.

47. The interviews with political, military and police authorities, public officials, accused persons, witnesses and victims of the attacks, and members of the public chosen at random in Havana, formed a body of first-hand material as a basis for as thorough and objective an investigation as possible into the subject assigned to the Special Rapporteur. Direct observation was also carried out of the places damaged and legal documentation and reports were prepared by Cuban officials at the Special Rapporteur's request to determine more precisely and document facts he believed needed further clarification. Moreover, the freedom of movement enjoyed by the Special Rapporteur and the openness with which those interviewed expressed their opinions made it possible for him to form an independent judgement uninfluenced in any way, a matter of importance at the stage of assessing the facts and preparing this analysis.

48. The methodology adopted was thus to concentrate on the facts and examine them objectively in order to look at issues gradually approaching the heart of the matter, so as to determine the exact nature of the attacks. In this way it was hoped to reconstruct as accurately as possible the process by which the attacks were organized, who the perpetrators were, the extent to which third parties were involved, the objectives pursued and the significance of the harm done by the violent acts involved.

49. The first point to be objectively clarified was whether Cuba had in fact been the target of bomb attacks that had injured people and damaged tourist facilities in the city of Havana. A visual inspection of the Copacabana, Melia-Cohiba, Chateau-Miramar, Triton, Nacional and Capri hotels, the Ache discotheque in the Melia-Cohiba hotel and the historic La Bodeguita del Medio restaurant, all places which still showed traces of the explosions, and the Special Rapporteur's interviews of workers in these premises, some of whom had been injured by the

explosions, left no room for doubt the bomb attacks had in fact taken place. By their magnitude, they were terrorist outrages, their aim being primarily to cause damage and sow indiscriminate terror with no concern for human life.

50. The second question that needed to be answered was whether the hotel attacks were isolated incidents or formed part of a broader strategy. In this connection, the interviews, documentation and other information gathered is also very clear: there was no suggestion of an isolated, individual and demented act. The Special Rapporteur received official statements and evidence relating to some 30 attacks that took place between 1995 and June 1998. Some were successful, others were not. In all cases, the technology used was the same. The targets selected were also all of the same type: public places and tourist facilities. Those identified as the agents or perpetrators were foreign nationals and had in fact been contacted outside Cuba by persons who, there is ample evidence to suggest, are in contact with organizations opposed to the Government of President Fidel Castro and operating from third countries, outside Cuban territory. It can thus be maintained that the attacks formed part of a major plan to attack Cuban tourist facilities and threaten the safety of Cuba's population and that of visiting tourists.

51. The third question relates to the extent of the damage and the effects of the attacks. One Italian citizen, Favio Di Celmo, was killed, a number of people who were in the immediate vicinity were seriously injured and others suffered emotional and psychological effects, for which they required medical attention. In terms of material damage, the explosive used was a plastic type known as C4, a mixture of hexogen and penthrite, which is extremely powerful and has a variable capacity for material destruction. Windows and window frames, panes of glass, doors, cornices, wood panels, electrical installations, curtains, parquet floors, flowerpots, ornaments, furniture, etc. were destroyed by the blasts. Undoubtedly, however, the greatest - and least quantifiable - damage resulted from the fact that it was a connected series of attacks whose aim was to give the world the impression that Cuba is an unsafe country, at the mercy of violent attacks.

52. The fourth question to be asked is whether these incidents have had an impact on the Cuban people's effective enjoyment of human rights? The answer is clear. No premeditated attack or violent act that causes death or injury to people, or violates their physical integrity and creates panic and insecurity can be excused, for any reason. To dispose of people's lives and expose them to danger, and to do so using a weapon of great destructive force, is terrorism and a violation of the right to life, physical integrity and security, rights that are recognized and protected by international instruments of human rights law. Respect for these rights is an obligation on all States, organizations of all kinds and all individuals.

53. The fifth question necessarily relates to the mercenary nature of the attacks. In this connection, the Special Rapporteur interviewed at some length the two Salvadoran nationals directly and personally guilty of the offences, who have been sentenced to death, the penalty provided in Cuban law for such cases. They have both appealed against the sentence and are awaiting the outcome of a review that could lead to clemency and a commuted sentence. Out of conviction and principle, the Special Rapporteur, who is opposed to the death penalty, feels obliged to place on record here his hope that clemency will be granted and that the convicted persons, who have admitted their guilt and shown signs of remorse, will have their sentences magnanimously commuted.

54 There can be no doubt, however, that the two Salvadorans and also the three Guatemalans agreed to participate in criminal acts for money in the knowledge that human lives could be lost. They have all admitted that they were "worked on" and finally persuaded to go to Cuba to detonate bombs in specific locations, with inducements ranging from US$ 1,500 to US$ 5,000 for every bomb they exploded. Some of them successfully carried out their criminal mission, others were arrested when trying to enter Cuba as tourists with the parts they would subsequently use to arm the bombs hidden in their luggage. On this point, there are plenty of police files, legal evidence, experts' reports and even the materials that were seized. On top of all that, in their confessions and admissions of guilt to the Special Rapporteur in private interviews without witnesses, they freely acknowledged that they had acted, not for ideological reasons of any kind, but for financial gain. In other words, they agreed to become mercenaries, even though they were aware, from the training they received, that the operation would not only cause general harm to another country but also endanger the lives and physical integrity of individual persons.

55 The sixth question that arose during his extensive interviews with the accused persons, the Special Rapporteur had an opportunity to assess the personalities of those involved in the bomb attacks and to understand, or at least to form a theory about, the reasons why they had been singled out for recruitment, training and hiring. All of them had clearly been studied in advance and the temptations offered had been based on an understanding of their personalities. Those who had used them were therefore confident that they could be manipulated, enticed with money and persuaded to become mercenaries. The Salvadoran Cruz Leon, for example, is a young man of 28, who was traumatized by violence from an early age, attracted to danger and to extreme risk-taking. Cruz Leon combines the memory of the mass killings he saw during the armed conflict in El Salvador with an imagination peopled by screen heroes. He therefore saw himself as a kind of "justiciary", a hero of violent deeds from which he always emerged the victor. As he admitted to the Special Rapporteur, Cruz Leon gets a particular kick from adrenaline. So travelling to Cuba carrying bombs that he then detonated, and what is more being paid to do so, was so extraordinarily exciting that he was almost totally blind to the fact that his action was intrinsically immoral and unlawful.

56 The other cases consist of people who are emotionally disturbed in their personal lives, with failed relationships or debts, or whose self-esteem has been weakened by the use of drugs. In short, they are weak personalities beset by problems, who could be - and were - manipulated and persuaded by offers of money to agree to carry out an act that is mercenary because of the payment and terrorist because of its nature and consequences.

57 The seventh question is whether the guilt is limited to those who committed the material act or whether it also extends to those who recruited, hired and trained them, provided the material to arm the bombs and instructed them on how, where and when to explode them. On this point, too, there can be no doubt, since the guilt for a mercenary act is shared between the person who engages a mercenary and whose money is used to recruit, finance and plan the committing of an offence, and the person who, for a fee, agrees to become a mercenary.

58 In this sense, the foreigners who accepted money to mount attacks in Cuba are mercenaries but those who conceived, planned, contracted and financed the attacks cannot be

absolved of responsibility. The Cuban authorities, in allegations published internationally and repeated to the Special Rapporteur, and amply and reliably documented, have named chiefly Francisco Chávez Abarca, a Salvadoran national, and Luis Posada Carriles, a Cuban by origin. Both of these are alleged to have participated in the attacks and are being held individually responsible. They have also been linked to Cuban organizations established and operating in Florida with the aim of creating problems for the Cuban Government. These organizations and members of their staff are explicitly named in the testimony given by agents Santos Armando Martínez Rueda and José Enrique Ramírez Oro.

59. According to the Government of Cuba, those organizations are centres of conspiracies to destabilize the country and carry out terrorist attacks so as to bring down Fidel Castro's Government. The role of agents operating outside Cuba was made clear by Mr. Luis Posada Carriles in statements to the New York Times and an interview with CBS during the Cruz León trial, in which he admitted that he had paid Cruz León, through one of his agents, to carry out the attacks, and that other operations were being prepared that were likely to cause serious problems in Cuba.

60. The eighth question to be asked was what was the purpose of the attacks, why they were carried out and what they were intended to achieve. It must be borne in mind that there has been a whole series of attacks on Cuban territory, always planned elsewhere. At various times, as early as 1959, their aim has been to undermine the sovereignty and self-determination of the Cuban people, and they are of international public knowledge. Some of these incidents are documented both in Cuban government files and in documents declassified in the United States of America. They were carried out through covert operations, through infiltration from abroad and through the use of mercenaries. In an interview with the Special Rapporteur, the Minister of Defence stated that 549 Cubans had died and 7,200 had been crippled in such attacks.

61. Although there have been times when the intensity and frequency of these attacks have decreased, they have never ceased to be a constant and omnipresent threat. The Minister of Tourism stated, in an interview, that the attacks on Cuban tourist centres in recent years had had the clear political objective of ruining an industry that had become one of the Cuban economy's main sources of income. According to the Minister's assessment, the economy has begun to grow again after a fall of 35 per cent in gross domestic product (GDP). It is hoped that Cuba will reach a figure of 7 million visitors a year by 2010. The Minister also said that tourism was important not only for the income it generated, since it provided work for 80,000 people directly and another 240,000 indirectly, but also because it enabled visitors from various parts of the world to get to know Cuban people and see for themselves what life is like in the country.

62. The attacks were designed, therefore, to destroy the atmosphere of tranquillity that is the prime requisite for attracting tourism or, in other words, to replace the ordered calm of normal everyday life by general insecurity and thereby generate international publicity that would discourage tourists from visiting Cuba. The undoubted aim of the series of attacks on hotels, restaurants, discotheques and summer resorts was to harm tourism and thus seriously damage Cuba's economy. As a first reaction, a number of tour operators proceeded to cancel their bookings. However, both the rapid response of the Cuban authorities and the international outcry against the attacks removed the immediate risk and enabled Cuba's tourist trade to recover to its planned levels during 1998 and 1999. Even so, it must be emphasized that a plan that is

not concerned about sacrificing human lives in order to disrupt the tranquillity of a country and destabilize its Government is totally unacceptable. Whatever the nature of a country's political regime or economic system, no one is entitled to undermine, particularly through terrorist action, the peace and security to which its people have a right.

63. The ninth question, once the facts have been assessed and the objectives, conception, planning, perpetrators and execution of the attacks established, is necessarily concerned with the evaluation of the act itself and whether its claims to legitimacy are to be accepted or rejected and condemned. It would be absurd to try and ignore the fact that vehement and radical opposition outside Cuba, to the Fidel Castro regime, especially from Cuban-American organizations in Miami, has inspired a variety of actions against the Cuban Government aimed at undermining it, isolating it, bringing it down and replacing it by one with different values and ideological orientation. It is not, and cannot be, the purpose of this report to meddle with the political polemic aroused by the Cuban regime, still less to take one side or the other. To turn aside from this course of conduct would be a serious departure from the ethical and independent position that ought to characterize the behaviour of a Special Rapporteur who, as an independent expert, prepares reports and formulates recommendations with the aim of effectively applying international human rights standards.

64. So as not to deviate by one millimetre from that course of conduct, and out of respect for the independence that a Special Rapporteur for the Commission on Human Rights must defend, this report must maintain that it is natural for any human being either to be in agreement and sympathy with, or else to find fault with or objections to, any political system whatever it may be. In the light of this principle, the right to freedom of expression or of opinion, or to take up a political position, whether inside or outside Cuba, concerning that country's political regime, must be recognized as existing, particularly as far as Cuban nationals are concerned. That is a political right recognized and protected by international human rights instruments. Wherever there is a right, however, there is also a limit to the exercise of that right, a limit that must not be transgressed by actions that exceed the right. The exercise of political rights ends where violence and terror begin. Violence and terror pervert and delegitimize opposition to a Government, the more so if such opposition is located outside the national territory and is attempting to assault the Government from abroad, through indiscriminate action to undermine the tranquillity and safety of its people and its territory, by means of acts of violence that no national or international law authorizes or legitimizes.

65. The attacks on tourist facilities in Cuba were conceived as a sustained bombing campaign that would disturb the security of Cubans living in the island and, more particularly, of foreign tourists, the plan was prepared outside Cuba with the participation of Cuban-American agents having links to organizations hostile to the Government of Cuba, and executed using foreign mercenaries who were specially recruited, hired, trained and financed. The recruitment and training of those who were to carry out the attacks took place in third countries. These attacks were terrorist acts carried out by mercenary agents and as such must be categorically condemned. By indiscriminately violating the peace and tranquillity of all those living in Cuba, particularly in Havana, and causing damage, anxiety and panic, they prevented the effective enjoyment of human rights by the population of that country.

66. There is no such thing as good or bad terrorism according to who the target is or where the terrorist act takes place. Nor are there good or bad mercenaries depending on who they fight for or against. Similarly, it is not acceptable to take up a lax or tolerant position and allow a country's territory to be used to cause problems for the Government of another country with which there are political disagreements while, at the same time, not allowing the territory to be used for terrorist actions against a friendly Government. There can be only one rule and it must be strictly applied: no State can legitimately consent to or authorize the use of its territory in planning or carrying out activities that express its own hostility to another country or Government, or permit the creation of clandestine organizations for that purpose. No distinctions can be made between degrees of proximity, friendship, ideological closeness or special interests. Failure to recognize this principle opens the doors to acts of aggression, terrorism, armed conflict and war, which the international community rejects as means of settling disputes. This is the guiding principle in all organizations of the international community that are working to ensure worldwide respect for the values, principles and standards of international law.

67. There remains a tenth and last question, that of international responsibility. Taking the assessment made to its logical conclusion, the Special Rapporteur finds it inherently unjust that, while the actual perpetrators of the attacks have been punished with the full severity of the law, those who recruited, trained and hired them, supplied the materials and explosives, provided them with papers and paid them, are still at large and enjoying full impunity in the countries where they live. These persons are participants in an ongoing offence, and perhaps bear a greater share of the guilt than the actual perpetrators. Likewise the organizations on whose account they acted. In this sense, and quite apart from any differences or coincidences that might exist between the Government of Cuba and the Governments of other countries whose territory was used in committing the offence, it is clearly necessary to initiate a judicial inquiry to establish the identities of all the natural and artificial persons involved in planning and carrying out these offences, their degree of responsibility and guilt, and the penalties to be applied. These offences began to be committed outside Cuban territory. The legal records of the trials in Cuba of the Salvadoran and Guatemalan nationals charged with being the material perpetrators of the offences give precise details of the premises, places, houses, hotels, restaurants, districts, towns, etc., where the offences were planned and prepared and where the mercenaries were recruited, hired, trained and funded.

III. PRIVATE MILITARY SECURITY COMPANIES

68. Although the central theme of this report is the Special Rapporteur's mission to Cuba, information continues to come in on the subject of private companies offering military security on the international market, and especially concerning companies that become involved in armed conflicts and recruit mercenaries for that purpose. It is important to make clear that is not the fact that there are private companies working in the area of security that gives cause for concern. Such companies may have a very positive contribution to make to military science in terms of scientific research, strategy development, technological applications, advisory services and project evaluation, etc. They have something important to say as regards ways of increasing security. The problem arises when companies of this kind try to supplant the State and its armed forces and security mechanisms, become directly involved in military actions and recruit mercenaries.

69 Companies have been reported to have signed contracts with one of the parties in an armed conflict and, in order to provide the agreed service, have hired people with military experience. This occurs in a context in which gaps in legislation mean there are no obstacles to the recruiting or hiring of mercenaries. The Special Rapporteur does not contest private companies' right to work in the area of security. However, he has pointed out that they must act within certain bounds, which they should not overstep. Anything to do with defending national sovereignty, territorial integrity, the right to self-determination and the protection of human rights, is the inalienable responsibility of the State. Private companies may not become directly involved in armed conflicts, still less recruit or hire mercenaries.

70 Unfortunately, there are States, weakened by lengthy armed conflicts, whose Governments find it difficult to assert their authority. Assisting such States to provide their armed forces and police with solid professional training and training in democracy and human rights may be an effective way of helping to reduce the risks of instability and conflict. Yet, whatever its situation or the problems it faces, the State is always responsible for national sovereignty, territorial integrity, the exercise of the right to self-determination and the enjoyment of human rights. The State cannot divest itself of its basic obligations in this area, nor can it permit the formation of private armies or the privatization of war. If that were to happen, the State would no longer have any obligation to defend peace and life and would be replaced in military matters by private companies that by definition are concerned with their own interests which are not necessarily those the State should protect and promote.

71 It is equally unacceptable, on the other hand, simply to deny private companies the legal right to operate in the sphere of military security. The appropriate course of action is to devise regulations clearly establishing the areas in which private companies may legally operate. That entails establishing in advance what the State can legitimately transfer to the private sector in terms of military security and what should remain in State hands because it is inherent to the State's very existence.

72 The denunciation of the excesses committed by some companies mentioned in previous reports by the Special Rapporteur is simply a matter of informing them that they cannot usurp State responsibilities and convincing them that there is a common interest in regulating and limiting their activities in the sphere of military security, without going so far as to suggest prohibiting their existence. In any case, it must be made absolutely clear that private security companies, including those active in military security, cannot recruit, hire, finance or use mercenaries to fight in armed conflicts.

73 If this were permitted or tolerated, there would be dangerous implications for the enjoyment of human rights. Extreme liberalism that stripped the State of such inherent functions as the defence of national sovereignty, territorial integrity, self-determination and law and order, would threaten the very principles on which the international community is built. It is therefore important to move towards wise, sensible and democratic legal regulation.

74. Not to move towards legal regulation or not to endorse the rejection of the hiring and use of mercenaries would be to send a misleading signal that the privatization of war, the formation of private armies and the intervention of paramilitary forces with a mercenary component could be tolerated. It would be but a short step from there to the abandonment of peoples to discrimination and domination.

IV. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

75. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in December 1989, will contribute to a better identification of situations involving mercenaries, the effective prosecution and punishment of offenders and the clear determination of jurisdiction in each case, and will facilitate procedures for the extradition of mercenaries and preventive cooperation among States.

76. The Special Rapporteur is obliged, however, to draw the attention of the Commission on Human Rights to the fact that, more than 10 years after the International Convention's adoption by the General Assembly, the signature or accession of three States is still needed for it to enter into force. Only 19 States have completed the process of expressing their willingness to be bound by the Convention: Azerbaijan, Barbados, Belarus, Cameroon, Cyprus, Georgia, Italy, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. The following nine States have signed the Convention but have not yet ratified it: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania and Yugoslavia. Pursuant to article 19, the International Convention is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General.

77. The International Convention broadens the scope of international law regarding the prohibition of the activities of mercenaries, currently limited mainly to article 47 of the 1977 Protocol I Additional to the Geneva Conventions of 1949 and the 1977 Organization of African Unity (OAU) Convention on the Elimination of Mercenarism in Africa.

V. CONCLUSIONS

78. According to the information received by the Special Rapporteur and the observations he has made during his various missions, mercenary activities continue to be carried on both through traditional means of recruitment and hiring and in new forms, including recruitment by private companies offering military security services, which take part in armed conflicts in specific countries by virtue of contracts signed with Governments.

79. Since the nature of the act and the function of mercenary have not altered, despite changes in forms and operational methods, the General Assembly, the Security Council, the Economic and Social Council and the Commission on Human Rights should continue to condemn mercenary activities, particularly when such activities have the effect of impeding the enjoyment of human rights and the exercise of the right of peoples to self-determination, and jeopardize the sovereignty of States, the principle of non-interference in internal affairs and the stability of constitutional Governments.

80. The Special Rapporteur's mission to the Republic of Cuba in September 1999 at the invitation of the Cuban Government allowed him to verify in situ that Cuba, and in particular Havana, had been the victim of several bomb attacks on tourist facilities in 1997, which resulted in the death of an Italian citizen and injuries to several other persons, as well as considerable material damage.

81. From extensive documentation, interviews and direct observation, as well as a critical assessment of the overall situation, the Special Rapporteur concludes that the perpetrators of the bomb attacks in Cuba in 1997 - some of which were carried out while others were averted in time - were Salvadoran and Guatemalan individuals who, regrettably, had agreed to commit these offences for money. This amounts to mercenary activity. In interviews with the Special Rapporteur, these individuals admitted acting for payment and receiving payment, acknowledged their guilt and showed unmistakable signs of remorse.

82. Similarly, the Special Rapporteur's inquiries and analysis have convinced him that these persons were recruited, trained, hired and used by third parties of Cuban origin resident outside Cuba who, operating from outside Cuban territory and very possibly in collaboration with organizations opposed to President Fidel Castro's Government and mainly based in Miami, planned the attacks and then directed and executed them using the mercenaries they had recruited, who entered Cuba posing as tourists. These third parties, despite their criminal liability, are still at large and continue to enjoy impunity in respect of these offences.

83. On the basis of the information collected during his official mission to Cuba, the Special Rapporteur concludes that the purpose of the attacks in question was mainly to disrupt tourism in Cuba in the most highly visible way possible, by creating a situation of general anxiety and insecurity that would cause foreign tourists to stop travelling to Cuba. Although the attacks resulted in the loss of one life, injuries and damage, they did not have the desired effect. Nevertheless, the point is that this was a use of illegal methods, which violated human rights, to change or try to change the situation in a country. Such methods are utterly opposed to international law.

84. The Special Rapporteur will keep the question of private military security companies under review, with particular emphasis on companies that attempt to become involved in armed conflicts through the recruitment, hiring, financing, training and use of mercenaries. Some of the services provided by such companies, such as general security or military training services to Governments, are fully in accordance with international law. Others, such as direct military intervention in armed conflicts by the use of mercenaries, should not be tolerated. It seems to be essential to prepare legal rules if the enjoyment of human rights and respect for international humanitarian law are to be safeguarded.

85. More than 10 years have passed since the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, yet only 19 States have completed the process of expressing their willingness to be bound by it. For the Convention to enter into force, 22 States must ratify or accede to it. The delay leaves the door open to the growth of criminal activity by mercenaries.

VI RECOMMENDATIONS

86 In view of the persistence of mercenary activities of various kinds, the Special Rapporteur recommends that the Commission on Human Rights should continue to uphold its explicit condemnation of mercenary activities, requesting the States Members of the United Nations to give serious consideration to incorporating into their domestic criminal law provisions classifying mercenarism as a crime and making the fact of being a mercenary an aggravating circumstance in the commission of other wrongful criminal acts, especially acts of terrorism

87 The Commission on Human Rights should also seriously consider recommending to all the Member States that they explicitly prohibit any use of their territory for the recruitment, training, assembly, transit, financing or use of mercenaries

88 The Special Rapporteur also recommends that the Commission on Human Rights should remind the Office of the United Nations High Commissioner for Human Rights of the need to carry out studies and disseminate information on the adverse effects of mercenary activities on the enjoyment of human rights and the exercise of the right of peoples to self-determination Such information should point out that mercenaries usually offer as a comparative advantage of their services their greater military efficiency and the fact that they do not regard themselves as being bound to respect human rights or the rules of international humanitarian law It should thus be borne in mind that mercenaries usually show a disdain for human life and dignity and international law and consider cruelty and contempt for the human being to be virtues The participation of mercenaries in any situation in which their services are unlawful usually constitutes a serious obstacle to the enjoyment of human rights

89 The Special Rapporteur also recommends that the Commission on Human Rights should condemn the recruitment, hiring, training and financing of mercenaries to carry out bomb attacks in Havana in 1997, in order to damage Cuba's tourist industry and thereby its economy Through recourse to mercenaries, the right to life, integrity and security of the residents of Havana and their tourist visitors was violated This was an attack conceived, planned, prepared and financed from abroad, which, according to all the evidence available, received no aid, collaboration or support from anyone resident in Cuba, from which it is deduced that there was an intent to violate the Cuban people's right to self-determination

90 The Special Rapporteur has noted in the legal records the confessions of guilt by the Salvadoran and Guatemalan nationals who agreed to become mercenaries, their remorse and their explicit assistance in the inquiries, which made it possible to uncover and counter a major bombing campaign The Special Rapporteur recommends that the Cuban authorities should take these factors into account and, while nevertheless condemning mercenary activities and terrorism in the harshest and strongest possible terms, consider granting clemency and commuting the death sentences in these cases The Special Rapporteur wishes to place on record that this recommendation to the Cuban authorities is the product of a firm conviction, a position of principle and an examination of the facts and the legal records

91 The Special Rapporteur suggests that, in a spirit of strict justice and equity, and as a clear signal of its rejection of impunity, the Commission on Human Rights should recommend that

judicial proceedings be initiated in each country whose territory had been used unlawfully, given that the perpetrators have demonstrated and admitted that third parties participated and conceived the bomb attacks from outside Cuba. They drew up the plans, recruited the mercenaries, trained and financed them and provided them with the materials to carry out the attacks after entering Cuba as tourists. All this activity was carried out unlawfully on the territory of third countries, as mentioned in the relevant legal records. Those who planned and put into effect the bomb attacks, including those who recruited, hired, financed and trained the mercenaries, should be criminally prosecuted. Such proceedings would also provide an opportunity to investigate the links of these persons to organizations devoted to the export of criminal activities, with a view to neutralizing them and compelling them to observe international and domestic law.

92. It is also recommended that the Commission on Human Rights should suggest that the States Members of the United Nations be extremely careful in their dealings with private military security companies, especially those that attempt to intervene in internal armed conflicts by supplying mercenaries to one of the parties to a conflict. In that regard, the Member States should be recommended to consider the possibility of agreeing on international and domestic rules on military security.

93. Given the gaps in legislation that continue to facilitate the use of mercenaries, the increase in their numbers and the emergence of new forms of mercenary activity, the Special Rapporteur recommends that the Commission on Human Rights reiterate its call to the Member States to ratify or accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. This is all the more necessary in view of the fact that only three States have to ratify or accede to the Convention for it to enter into force.

Annex

SCHEDULE FOR THE VISIT TO CUBA

12 September 1999

Interview with Mr. Abelardo Moreno, Mr. Juan Antonio Fernández and Mr. José Peraza Chapeau, Director, Deputy Director and official, respectively, of the Department of Multilateral Affairs of the Ministry of Foreign Affairs

Official dinner offered by Mrs. Maria de los Angeles Florez, Deputy Minister for Foreign Affairs

13 September 1999

Coordination meeting with
Mr. Luis Gomez-Echeverri, United Nations Resident Coordinator in Cuba and Resident Representative of the United Nations Development Programme (UNDP),
Mr. Jorge Chediek, Deputy Resident Representative; and
Mrs. Sara Almer, UNDP official and focal point for the mission

The Special Rapporteur attended a workshop on "Mercenarism and the development of its theoretical definition", organized by the Cuban Union of Jurists, speakers were Dr. Olga Miranda Bravo, Dr. Miguel D'Estefano Pisani and Dr. Rene Qirós Pires

Working meeting with Colonel Adalberto Raveiro Garcia, Head of the Judicial Investigation Department of the Directorate-General of Counter-Intelligence of the Ministry of the Interior

14 September 1999

Interviews with
General Alvaro Lopez Miera, Deputy Minister and Chief of Staff of the Revolutionary Armed Forces,
Dr. Juan Escalona Reguera, Attorney-General of the Republic

15 September 1999

Interviews with
Dr. Roberto Diez Sotolongo, Minister of Justice,
Mr. Ibrahim Ferradaz, Minister of Tourism,
Dr. Ruben Remigio Ferro, President of the People's Supreme Court,
General Abelardo Colome Ibarra, Minister of the Interior

16 September 1999

Visit to tourist centres where attacks took place (Copacabana, Melia-Cohiba, Tritón, Nacional de Cuba, Capri and Chateau Miramar hotels, Ache discotheque in the Melia-Cohiba hotel, La Bodeguita del Medio restaurant).

Interviews with victims of the attacks, eyewitnesses and managers of the establishments.

Visit to the prison and interviews with the accused persons: Raúl Ernesto Cruz León, Otto Rene Rodríguez Llerena, Nader Kamal Musallam Baracat, María Elena González Meza de Fernández and Jazid Iván Fernández Mendoza.

Interview with Mr. Percy Francisco Alvarado Godoy ("agent Frayle").

17 September 1999

Interview with Dr. José Peraza Chapeau, Legal Director of the Ministry of Foreign Affairs.

Interview with the Acting Minister for Foreign Affairs.